

## **REMARKS**

Reconsideration of the subject application in view of the present amendment is respectfully requested.

By the present amendment, the specification has been amended to eliminate superfluous language therein. Claims 20 and 34 have been amended to correct formal errors therein and to eliminate an alleged indefiniteness therein. Claim 34 has also been amended to yet more clearly define the invention claimed therein. A new Abstract of the Disclosure has been submitted.

Based on the foregoing amendments and the following remarks, the application is deemed to be in condition for allowance, and action to that end is respectfully requested.

### **I. Specification**

The Examiner requested to subministrate a copy of the substitute specification, which was filed on July 16, 2004, with an amendment marking what was amended. Enclosed herewith a copy of the substitute specification in

which the deleted language is striked through and the added language is underlined.

## **II. Objection and Rejection of Claims**

### **IIa. Objection to the Claims**

The Examiner objected to claims 20 and 34 for formal errors therein. As noted above, claims 20 and 34 have been amended to correct formal errors therein.

### **IIb. Rejection of Claims Under 35 U.S.C. § 112**

The Examiner rejected claims 20-34 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite, pointing out specific language in claims 20 and 34 rendering these claims and claims 21-33, dependent on claim 20, indefinite. In particular, the Examiner indicated that the language “the at least one spring means holds the at least one catch hook with the first stop on the guide member” (claim 20, lines 18-19, claim 34, lines 17-18) appears to be inconsistent with the spring means retracting the catch hook to the closing position (in the closing direction).

As noted above, claims 20 and 34 have been amended to eliminate the alleged indefiniteness therein. Specifically, claims 20 and 34 now recite that “in an opening position of the at least one catch hook (12) and with the at least one swiveling lever (8) being pivoted in the closing direction, the at least one spring means hold the at least one catch hook with the first final stop (14) on the guide element to provide for pivoting the at least one catch hook in the closing direction thereof by the swiveling lever”.

It is respectfully submitted that this language is not indefinite and is consistent with the description (please see paragraphs 0040, 0043, 0045). It is to be noted that the spring (17) always retracts the catch hook in the closing direction. In the open position of the catch hook which is shown in Fig. 1, the lever (8) occupies its initial position, with the guide member (9) engaging the first final stop (14') and preventing the catch hook (12) from being retracted in the closing direction by the spring (17). As the swiveling lever (8) is rotated by the drive (19) in the closing direction (counterclockwise), the guide member (9) is displaced together with the swiveling lever, with the spring (17) pulling the catch hook in the same direction so that the catch hook is held with the first final stop on the guide member until the catch hook (12) engages the closing

edge (14) of the closure (2) which prevents further movement of the catch hook (12). As the swiveling lever (8) continues to rotate, the guide member (9) moves along the cam segment (14"), with the spring (17) pulling the hook, and thereby, the closure (2) to its closing position, until the guide member engages the second final stop (14").

In view of the above, it is respectfully submitted that claims 20 and 34, together with claims 21-33, comply with all of the requirements of 35 U.S.C. § 112, second paragraph.

It is further respectfully submitted that claim 20, which was indicated to be allowable upon being rewritten or amended to overcome the rejection under 35 U.S.C. § 112, second paragraph, is in condition for allowance, together with claims 21-33 dependent on claim 20.

### **IIc. Rejection Over the Prior Art**

The Examiner rejected claim 34 under 35 U.S.C. § 103(a) as being unpatentable over Herman, U.S. Patent No. 3,806,174 (Herman) in view of

Butts, U.S. Patent No. 3,403,934 (Butts). It is respectfully submitted that claim 34 is patentable over the combination of Herman and Butts.

Specifically, claim 34 recites that the at least one catch hook is adapted to move through a slot shaped aperture in an upper side of the housing which enables the at least one catch hook to be displaced perpendicular to the upper side of the housing and parallel thereto, so that the at least one catch hook does not substantially project beyond the upper side of the housing.

The novel features of the present invention, as defined by claim 34, are not disclosed or suggested in either of Herman and Butts.

In Herman, the upper side (wall section 14) of the housing (truck cab 11) does not have a slot-shaped aperture, with the latch mechanism (10) being mounted on the wall section, projecting therefrom. Butts likewise does not show the structure recited in claim 34.

Generally, Herman is not believed to be a pertinent reference.

The case law holds that

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

Herman, which relates to a latch mechanism for securing a tilting truck cab to the fixed truck frame, is not in the field of applicant endeavor relating to a device for closing a closure with a housing of a laboratory centrifuge. Though both relate to a latch mechanism, it is very much doubtful that one involved in solving a problem of sealingly securing a closure to a housing of a laboratory centrifuge, would look for solution of the problem to the field of securing a truck tilting cab to the truck frame.

Neither is Herman pertinent to a particular problem the present invention solves, namely, providing a locking device for a closure of a housing with no locking elements projecting beyond the housing. Hermans solves a problem of

providing a latch mechanism for a truck cab having a minimum number of parts which are easy to manufacture and assembly.

Even assuming, *arguendo*, that Herman is a pertinent reference, the combination of Herman and Butts would not include a catch hook movable through a slot-shaped aperture in an upper side of the housing.

However, even with Herman being, *arguendo*, a pertinent reference, a *prima facie* case of obviousness has not been made.

Under MPEP § 2143 *prima facie* case of obviousness requires that three basic criteria be met.

First, there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitation.

It is respectfully submitted that the first element of *prima facie* obviousness has not established.

“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggesting supporting the combination. Under section 103, teachings of references can be combined only if there is some suggesting or incentive to do so.”

*In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992 (footnote omitted) (emphasis in original). See also *In re Sernaker*, 217 U.S.P.Q. 1,6 (Fed. Cir. 1983); *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 8 U.S.P.Q.2d 1468, 1475 (Fed. Cir. 1988); IU, 10 U.S.P.Q.2d 1397, 1399 (Fed. Cir. 1989); *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

There is no suggestion, incentive or motivation in Herman and/or Butts for their combination. A statement that it would have been obvious to one skilled in the art to make modifications to the references is not sufficient to establish a *prima facie* case of obviousness. MPEP § 2143.01 relying on *Ex Parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). In order



to establish a prima facie case of obviousness, “it is necessary for the Examiner to present evidence, preferably in the form of some teaching, suggesting incentive or inference in the prior art, or in the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teachings.” *Id.* at 1301 (emphasis in original). No such evidence is presented in the Office Action. It is noted that the case law rejects the “common knowledge” of one skilled in the art as a substitute for specific evidence that the prior art suggests the invalidating combination or references. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002).

The Federal Circuit has held that a claimed invention was not obvious, where “[c]onspicuously missing from [the] record is any evidence, other than the PTO’s speculation (if it be called evidence) that one skilled in the art would have been motivated to make the modification of the prior art “necessary to arrive at the claimed invention. *In re Jones* 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992).

*Ex Parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App & Inter. 1985) requires that when the references do not suggest the invention “. . . the

Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teaching of the references.” No such line of reasoning is seen in the Office Action.

The Office Action asserts that because Butts teaches that it well known (?) in the art to have a seal between a closure and a housing in combination with a catch hook, it would have been obvious to provide a seal with a latch mechanism of Herman. However, there is no explanation in the Office Action why a seal would be needed for securing a tilting truck cab to a frame.

The Court of Appeals for the Federal Court clearly stated:

It is impermissible to use the claimed invention as an instruction manual or template to piece together the teaching of the prior art so that the claimed invention is rendered obvious.

In re Fritch, 23 U.S.P.Q. 2d 1780, 23 1780, 1783  
(Fed. Cir. 1992)

In the In re Fritch holding only confirmed a long established view that obviousness should not be read “into an invention on the basis of Applicant’s

own statements”, that the prior art must be viewed “without reading into that art Appellant’s teachings”, and that the teachings of the prior should, “in and of themselves and without the benefits of Appellant’s disclosure (emphasis in the original text) make the invention as a whole, obviously.” *In re Sponnoble*, 160 U.S.P.Q. 237, 243 (CCPA 1969). It is respectfully submitted that the teachings of the prior art does not make the present invention obvious.

It is respectfully submitted that obviousness of the present invention over the combination of Herman and Butts can be gleaned only from a hindsight reconstruction.

The Court of Appeals for the Federal Circuit has consistently ruled that it is not permissible to use hindsight to reject a claim.

As pointed out in *Uniroyal v. Redkin-Willey*, 5 U.S.P.Q. 2d 1434, 1438 (Fed. Cir. 1988):

When prior art references require selective combination by the Court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself. . . . Something in the prior art as a

whole must suggest the desirability, and thus the obviousness, of making the combination.

Nothing in the prior art suggests the desirability of the combination set forth in the Office Action. The same Court further stated:

. . . it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention."

In view of the above, it is respectfully submitted that the combination of Herman and Butts does not make obvious the present invention, as defined in Claim 34, and the present invention, as defined by Claim 34 is patentable over said combination.

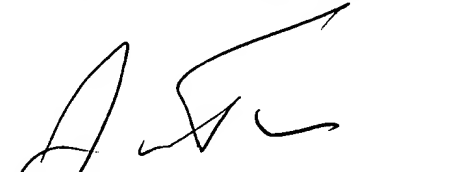
### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawing be further amended or corrected in formal

respects, in order to place in case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's amendment and the case passed issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully Submitted

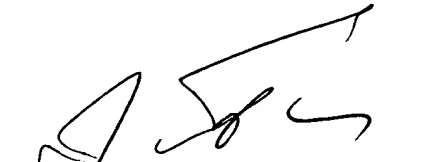


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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail and addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on May 9, 2005.



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David Toren